

Introduced by Senator Alpert

February 26, 1997

An act to amend Section 25658 of, and to amend and repeal Section 25658.4 of, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 805, as introduced, Alpert. Alcoholic beverages: sales to minors.

(1) The Alcoholic Beverage Control Act prohibits the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, persons under the age of 21 years. Existing law provides that any person who violates those provisions shall be punished by a fine of not less than \$250, or not less than 24 hours or more than 32 hours of community service, or a combination thereof as determined by the court.

This bill would increase those penalties to a fine of \$1,000 and not less than 24 hours of community service. This bill would impose a state-mandated local program by changing the penalty for a crime.

(2) The Alcoholic Beverage Control Act prohibits a clerk from making an off sale of alcoholic beverages unless the clerk executes, under penalty of perjury, on the first day he or she makes that sale, an application and acknowledgment, on a form prepared by the department, that includes at a minimum a summary of certain requirements and prohibitions in the act, as specified. Existing law also requires an off-sale licensee to post a notice relating to prohibited sales to persons under the age of 21 years, as specified.

This bill would require a retail licensee to post a notice that contains and describes the fines and penalties for the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, persons under the age of 21 years. Since a violation of this provision would constitute a crime, the bill would impose a state-mandated local program by creating a new crime.

This bill would also authorize the Department of Alcoholic Beverage Control to adopt rules and appropriate fees for licensees that it determines necessary for the administration of those provisions.

This bill would repeal a substantially duplicative provision.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25658 of the Business and
2 Professions Code is amended to read:

3 25658. (a) Every person who sells, furnishes, gives, or
4 causes to be sold, furnished, or given away, any alcoholic
5 beverage to any person under the age of 21 years is guilty
6 of a misdemeanor.

7 (b) Any person under the age of 21 years who
8 purchases any alcoholic beverage, or any person under
9 the age of 21 years who consumes any alcoholic beverage
10 in any on-sale premises, is guilty of a misdemeanor.

11 (c) Any on-sale licensee who knowingly permits a
12 person under the age of 21 years to consume any alcoholic
13 beverage in the on-sale premises, whether or not the
14 licensee has knowledge that the person is under the age
15 of 21 years, is guilty of a misdemeanor.

16 (d) Any person who violates this section shall be
17 punished by a fine of ~~not less than two hundred fifty~~
18 ~~dollars (\$250)~~ *one thousand dollars (\$1,000)*, no part of



1 which shall be suspended, ~~or~~ *and* the person shall be
2 required to perform not less than 24 hours ~~or more than~~
3 ~~32 hours~~ of community service during hours when the
4 person is not employed and is not attending school, ~~or a~~
5 ~~combination of fine and community service as~~
6 ~~determined by the court.~~

7 (e) Persons under the age of 21 years may be used by
8 peace officers in the enforcement of this section to
9 apprehend licensees, or employees or agents of licensees,
10 who sell alcoholic beverages to minors. Notwithstanding
11 subdivision (b), any person under the age of 21 years who
12 purchases or attempts to purchase any alcoholic beverage
13 while under the direction of a peace officer is immune
14 from prosecution for that purchase or attempt to
15 purchase an alcoholic beverage. Guidelines with respect
16 to the use of persons under the age of 21 years as decoys
17 shall be adopted and published by the department in
18 accordance with the rulemaking portion of the
19 Administrative Procedure Act (Chapter 3.5
20 (commencing with Section 11340) of Part 1 of Division 3
21 of Title 2 of the Government Code). Law
22 enforcement-initiated minor decoy programs in
23 operation prior to the effective date of regulatory
24 guidelines adopted by the department shall be
25 authorized as long as the minor decoy displays to the
26 seller of alcoholic beverages the appearance of a person
27 under the age of 21 years. This subdivision shall not be
28 construed to prevent the department from taking
29 disciplinary action against a licensee who sells alcoholic
30 beverages to a minor decoy prior to the department's
31 final adoption of regulatory guidelines.

32 SEC. 2. Section 25658.4 of the Business and
33 Professions Code, as added by Section 4 of Chapter 726 of
34 the Statutes of 1991, is amended to read:

35 25658.4. (a) On and after January 1, 1992, no clerk
36 shall make an ~~off-sale~~ *off sale* of alcoholic beverages unless
37 the clerk executes under penalty of perjury on the first
38 day he or she makes ~~such a~~ *that* sale an application and
39 acknowledgment. The application and acknowledgment
40 shall be in a form understandable to the clerk.

(1) The department shall specify the form of the application and acknowledgment, which shall include at a minimum a summary of this division pertaining to the following:

(A) The prohibitions contained in Sections 25658 and 25658.5 pertaining to the sale to, and purchase of, alcoholic beverages by persons under 21 years of age.

(B) Bona fide evidence of majority as provided in Section 25660.

(C) Hours of operation as provided in Article 2 (commencing with Section 25630) of Chapter 16.

(D) The prohibitions contained in subdivision (a) of ~~Sections~~ Section 25602 and Section 25602.1 pertaining to sales to *an* intoxicated person.

(E) Sections 23393 and 23394 as they pertain to on-premises consumption of alcoholic beverages in an off-sale premises.

(2) The application and acknowledgment shall also include a statement that the clerk has read and understands the summary, a statement that the clerk has never been convicted of violating this division or, if convicted, an explanation of the circumstances of each conviction, and a statement that the application and acknowledgment is executed under penalty of perjury.

(3) The licensee shall keep the executed application and acknowledgment on the premises at all times and available for inspection by the department. A licensee with more than one licensed off-sale premises in the state may comply with this subdivision by maintaining an executed application and acknowledgment at a designated licensed premises, regional office, or headquarters office in the state. An executed application and acknowledgment maintained at the designated locations shall be valid for all licensed off-sale premises owned by the licensee. Any licensee maintaining an application and acknowledgment at a designated site other than the individual licensed off-sale premises shall notify the department in advance and in writing of the site where the application and acknowledgment shall be maintained and available for inspection. A licensee

1 electing to maintain application and acknowledgments at
 2 a designated site other than the licensed premises shall
 3 maintain at each licensed premises a notice of where the
 4 executed application and acknowledgments are located.
 5 Any licensee with more than one licensed off-sale
 6 premises who elects to maintain the application and
 7 acknowledgments at a designated site other than each
 8 licensed premises shall provide the department, upon
 9 written demand, a copy of any employee's executed
 10 application and acknowledgment within 10 business days.
 11 A violation of this subdivision by a licensee constitutes
 12 grounds for discipline by the department.

13 (b) On and after January 1, 1992, the licensee shall post
 14 a notice ~~which~~ *that* contains and describes, in concise
 15 terms, prohibited sales of alcoholic beverages, a
 16 statement that the off-sale seller will refuse to make a sale
 17 if the seller reasonably suspects that the Alcoholic
 18 Beverage Control Act may be violated, and a statement
 19 that a minor who purchases or attempts to purchase
 20 alcoholic beverages is subject to suspension or delay in the
 21 issuance of his or her driver's license pursuant to Section
 22 13202.5 of the Vehicle Code. The notice shall be posted at
 23 an entrance or at a point of sale in the licensed premises
 24 or in any other location that is visible to purchasers of
 25 alcoholic beverages and to the off-sale seller.

26 (c) *On and after January 1, 1998, a retail licensee shall*
 27 *post a notice that contains and describes, in concise terms,*
 28 *the fines and penalties for any violation of Section 25658,*
 29 *relating to the sale of alcoholic beverages to, or the*
 30 *purchase of alcoholic beverages by, any person under the*
 31 *age of 21 years.*

32 (d) As used in this section:

33 (1) "Off-sale seller" means any person holding a retail
 34 off-sale license issued by the department and any person
 35 employed by that licensee who in the course of that
 36 employment sells alcoholic beverages.

37 (2) "Clerk" means an off-sale seller who is not a
 38 licensee.

1 (e) The department may adopt rules and appropriate
2 fees for licensees that it determines necessary for the
3 administration of this section.

4 SEC. 3. Section 25658.4 of the Business and
5 Professions Code, as added by Section 3 of Chapter 695 of
6 the Statutes of 1990, is repealed.

7 ~~25658.4. (a) On and after January 1, 1992, no clerk~~
8 ~~shall make an off-sale of alcoholic beverages unless the~~
9 ~~clerk executes under penalty of perjury on the first day~~
10 ~~he or she makes such a sale an application and~~
11 ~~acknowledgment. The application and acknowledgment~~
12 ~~shall be in a form understandable to the clerk.~~

13 ~~(1) The department shall specify the form of the~~
14 ~~application and acknowledgment which shall include at~~
15 ~~a minimum a summary of this division pertaining to the~~
16 ~~following:~~

17 ~~(A) The prohibitions contained in Sections 25658,~~
18 ~~25658.2, and 25658.5 pertaining to the sale to, and~~
19 ~~purchase of, alcoholic beverages by persons under 21~~
20 ~~years of age.~~

21 ~~(B) Bona fide evidence of majority as provided in~~
22 ~~Section 25660.~~

23 ~~(C) Hours of operation as provided in Article 2~~
24 ~~(commencing with Section 25630) of Chapter 16.~~

25 ~~(D) The prohibitions contained in subdivision (a) of~~
26 ~~Sections 25602 and 25602.1 pertaining to sales to~~
27 ~~intoxicated person.~~

28 ~~(E) Sections 23393 and 23394 as they pertain to~~
29 ~~on-premises consumption of alcoholic beverages in an~~
30 ~~off-sale premises.~~

31 ~~(2) The application and acknowledgment shall also~~
32 ~~include a statement that the clerk has read and~~
33 ~~understands the summary, a statement that the clerk has~~
34 ~~never been convicted of violating this division or, if~~
35 ~~convicted, an explanation of the circumstances of each~~
36 ~~conviction, and a statement that the application and~~
37 ~~acknowledgment is executed under penalty of perjury.~~

38 ~~(3) The licensee shall keep the executed application~~
39 ~~and acknowledgment on the premises at all times and~~
40 ~~available for inspection by the department. An~~

1 application and acknowledgment is valid only at the
2 off-premises for which it is issued and at no other
3 premises. A violation of this subdivision by a licensee
4 constitutes grounds for discipline by the department.

5 (b) On and after January 1, 1992, the licensee shall post
6 a notice which contains and describes, in concise terms,
7 prohibited sales of alcoholic beverages, a statement that
8 the off-sale seller will refuse to make a sale if the seller
9 reasonably suspects that the Alcoholic Beverage Control
10 Act may be violated, and a statement that a minor who
11 purchases or attempts to purchase alcoholic beverages is
12 subject to suspension or delay in the issuance of his or her
13 driver's license pursuant to Section 13202.5 of the Vehicle
14 Code. The notice shall be posted at an entrance or at a
15 point of sale in the licensed premises or in any other
16 location that is visible to purchasers of alcoholic
17 beverages and to the off-sale seller.

18 (e) As used in this section:

19 (1) "Off-sale seller" means any person holding a
20 license issued by the department for off-sale of alcoholic
21 beverages and any person employed by that licensee who
22 in the course of that employment sells alcoholic
23 beverages.

24 (2) "Clerk" means an off-sale seller who is not a
25 licensee.

26 SEC. 4. No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.

36 Notwithstanding Section 17580 of the Government
37 Code, unless otherwise specified, the provisions of this act

1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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